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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/462,971 06/28/00 GARCIA DURAN

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IM52/0116

EXAMINER

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ART UNIT

PAPER NUMBER

1714

DATE MAILED:

01/16/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

<b>Office Action Summary</b>	Application No. 09/462,971	Applicant(s) <b>DURAN ET AL</b>
	Examiner <b>VERONICA P. HOKE</b>	Group Art Unit <b>1714</b>

Responsive to communication(s) filed on \_\_\_\_\_

This action is **FINAL**.

Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle* 35 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire THREE month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

#### Disposition of Claim

Claim(s) 1-6 is/are pending in the application.

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

Claim(s) \_\_\_\_\_ is/are allowed.

Claim(s) 1-6 is/are rejected.

Claim(s) \_\_\_\_\_ is/are objected to.

Claims \_\_\_\_\_ are subject to restriction or election requirement.

#### Application Papers

See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

The proposed drawing correction, filed on \_\_\_\_\_ is  approved  disapproved.

The specification is objected to by the Examiner.

The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. § 119

Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

All  Some\*  None of the CERTIFIED copies of the priority documents have been

- received.
- received in Application No. (Series Code/Serial Number) \_\_\_\_\_.
- received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

#### Attachment(s)

Notice of References Cited, PTO-892

Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

Interview Summary, PTO-413

Notice of Draftsperson's Patent Drawing Review, PTO-948

Notice of Informal Patent Application, PTO-152

— SEE OFFICE ACTION ON THE FOLLOWING PAGES —

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***Claim Rejections - 35 U.S.C. § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-6 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Spelthann.

Patentee discloses polymer compositions comprising three polymers and a filler such as talc (col.5, lines 1-8). The polymers similarly to applicants comprise:

1) A non polar thermoplastic which can be a low density polyethylene, very low density polyethylene or linear low density polyethylene ( col.1, line 64 - col. 2, line 62).

**This component corresponds to applicants composition's component "(2)".**

2) A carboxylated olefin resin which can be a maleic anhydride modified polyethylene ( col.3, lines 29-59). **This component correspond to applicants composition's component "(3)".**

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3) A polar ethylene copolymer which may be a ethylene carbon monoxide terpolymer also having vinyl acetate monomers ( col.3; last paragraph - col.4, line 26). **This component corresponds to applicants component (1).**

The relative proportions are within applicant's range ( col.1, lines 27-47) as well as the monomers' relative proportions one to the other within a specific polymer per se.

Applicants characterization of the composition as being flame retardant does not impart novelty anew although Spelthann does not acknowledge the filled composition as having this property. Such characterization is inherent however because the same materials are present, e.g. talc ( "talcum").

Claims 1-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Spelthann as applied to claims 1-6 above, and further in view of Hughes et al and Opsahl et al.

Spelthann does not indicate just what the fire retardants are that are alluded to in col.5, initial paragraph. Opsahl ( col.3) relates that filler type flame retardants for LLDPE blends with ethylene vinyl acetate carbon monoxide blends having an additional polyethylene copolymer containing a COOH acid group ( col.2, lines 44-62) are typically magnesium hydroxide or its aluminum counterpart. Therefore this selection is considered to be well within the routineer's skill having been apprised of Spelthann's disclosure. Hughes relates that the graft modified polyethylene , corresponding to Spelthann's carboxy modified polyethylene is known to act as a compatibilizer for inorganic fillers in polyolefin matrices ( col.4, lines 25 et seq.) And this compatibilization is

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known to occur regardless of whether the base resin is a single resin " or any combination of the polymers ". See col.5, lines 6-12 wherein ethylene vinyl acetate and ethylene carbon monoxide resins as well as permutations thereof are referred to. Accordingly the purposeful utilization of Spelthann's composition wherein a carboxy modified (grafted) polyethylene is utilized with a filled polyethylene / ethylene vinyl acetate carbon monoxide terpolymer blend is prima facie obvious independent of whether the filler concomitantly provides flame retardancy in addition to reinforcement.

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vph

January 9, 2001

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